

REMARKS

In the Office Action¹, the Examiner took the following actions:

rejected claims 1-4, 6, 8-15, 17, 19-25, 27, 29, and 30 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent Application Publication 2004/0225507 to Smith et al. ("Smith") in view of U.S. Patent Application Publication 2002/0133387 to Wilson et al. ("Wilson"); and

rejected claims 5, 7, 16, 18, and 26 under 35 U.S.C. § 103(a) as allegedly unpatentable over *Smith* and *Wilson* in view of U.S. Patent Application Publication 2002/0019759 to Arunapuram et al. ("Arunapuram").

Claims 1, 9-12, 20-25, 27, and 30 are amended by this reply. Support for the amendments is found, for example, in paragraph [049] of the originally filed specification. Claims 1-27, 29, and 30 remain pending.

Applicant thanks the Examiner for conducting the June 29, 2011, telephonic interview with Applicant's representative. During the interview, the Examiner and Applicant's representative discussed the features of the pending claims that distinguish over the cited references. Applicant hereby amends claims 1, 9-12, 20-25, 27, and 30 based on the Examiner's helpful comments provided during the interview.

Applicant respectfully traverses the rejections of claims 1-27, 29, and 30 under 35 U.S.C. § 103(a). A *prima facie* case of obviousness has not been established with respect to the pending claims based on either of the asserted combination of prior art.

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement of characterization in the Office Action.

"The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. . . . [R]ejections on obviousness cannot be sustained with mere conclusory statements." M.P.E.P. § 2142, 8th Ed., Rev. 8 (July 2010)(internal citation and inner quotation omitted). "[T]he framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art." M.P.E.P. § 2141(II). In rejecting a claim, "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." M.P.E.P. § 2141(III).

A. **The 35 U.S.C. § 103(a) Rejection over Smith and Wilson**

Applicant respectfully traverses the rejection of claim 1 under 35 U.S.C. § 103(a) as being obvious over *Smith* in view of *Wilson*. A *prima facie* case of obviousness has not been established.

Amended claim 1 recites a method for planning a delivery of a good which includes, for example, "determining, by a source, a future availability date of the good, with respect to a date of the determining, at a set of source locations comprising origins for the good, the future availability date being determined independently of the requested delivery date," and "Selecting a source location, by a planner module, from the set of source locations based on the future availability date of the good at the set of source locations." (Emphasis added.)

The Office Action correctly states that *Smith* does not disclose selection a source location based on the availability dates of the good at a set of source locations. See OA, page 3. However, the Office Action alleges that *Wilson* teaches "a supply chain management system which discloses determining if the particular requested items are in stock with delivery dates, the system then holds the item for the customer to complete the purchase." OA, page 4. This is not correct.

Wilson discloses a promising engine module which determines "whether the closest (primary) warehouse can fulfill [a] request" by communicating with an application "which maintains up-to-date inventory of each warehouse in the system." See Paragraph [0050]. After this determination, if the primary warehouse is unable to fulfill the request, the engine determines "whether there are additional warehouses associated with the primary warehouse" that can fulfill the request. See paragraph [0051]; Fig. 5A. As the application of *Wilson* maintains only an "up-to-date inventory," and does not contain information regarding inventory available at a future date, *Wilson* does not disclose or suggest "determining, by a source, a future availability date of the good, with respect to a date of the determining, at a set of source locations comprising origins for the good, the future availability date being determined independently of the requested delivery date," and "Selecting a source location, by a planner module, from the set of source locations based on the future availability date of the good at the set of source locations," as recited by claim 1.

The method of claim 1 also includes "determining, by a route generation engine module, a set of trips based on a set of geographic routes, transportation service provider information, and scheduling information."

The Office Action alleges that *Smith* teaches "determining a set of trips based on a set of geographic routes, transportation service provide information, and scheduling information." OA, page 3. To support this allegation, the Office Action cites to paragraphs [0024]-[0025] of *Smith*, and states, "ship schedules from each supplier are received, in order to determine the delivery date. The examiner considers this to be a set of trips." *Id.* This is not correct.

Smith discloses a supplier ship schedule which "defines the daily frequency that supplier [sic] 152 will ship goods to each respective delivery agent 212." Paragraph [0025]. Although not explicitly stated, this supplier ship schedule, which is loaded into a electronic manifest (see paragraph [0025]), appears to be used to calculate a delivery date. See e.g., Fig. 3. Table 1 illustrates an example of a supplier ship schedule, which identifies "the day the order is processed," "the day the order is shipped from supplier," "the day the order arrives at the respective delivery agent's location," and "the delay before the good is available for shipping from respective delivery agent 212 to buyer 156." *Id.* Nowhere in the supplier ship schedule, nor in any other portion of *Smith*, does *Smith* mention determining a set of trips based on a plurality of information include "a set of geographic routes." Thus, *Smith* does not disclose or suggest "determining, by a route generation engine module, a set of trips based on a set of geographic routes,

transportation service provider information, and scheduling information," as recited by claim 1.

The Office Action cites *Wilson* as teaching "a supply chain management system which discloses determining if the particular requested items are in stock with delivery dates, the system then holds the item for the customer to complete the purchase." Even if the Office Action's characterization of *Wilson* were correct, which applicant does not concede, *Wilson* fails to cure the deficiencies of *Smith*. That is, *Wilson* also does not disclose or suggest "determining, by a route generation engine module, a set of trips based on a set of geographic routes, transportation service provider information, and scheduling information," as recited by claim 1.

In view of the mischaracterization of the prior art set forth above, the Examiner has neither properly determined the scope and content of the prior art nor ascertained the differences between the claimed invention and the prior art. Moreover, the Examiner has articulated no reason as to why one of skill in the art would find the claimed combination obvious in view of the prior art, despite these differences. For at least this reason, no *prima facie* case of obviousness has been established. The rejection of claim 1 under 35 U.S.C. §103(a) as being obvious over *Smith* in view of *Wilson* is thus improper and should be withdrawn.

Although of different scope, independent claims 12, 23-25, and 30 recite elements similar to those of claim 1 discussed above. Accordingly, the rejection of claims 12, 23-25, and 30 is also improper and should be withdrawn.

Claims 2-4, 6, 8-11, 13-15, 17, 19-22, 27, and 29 depend from one of claims 1, 12, and 25. Accordingly, the rejection of 2-4, 6, 8-11, 13-15, 17, 19-22, 27, and 29 is also improper and should be withdrawn.

B. The 35 U.S.C. § 103(a) Rejection over Smith, Wilson, and Arunapuram

Applicant respectfully traverses the rejection of dependent claims 5, 7, 16, 18, and 26 under 35 U.S.C. § 103(a) as allegedly unpatentable over *Smith* and *Wilson*, in further view of *Arunapuram*. A *prima facie* case of obviousness has not been established for claims 5, 7, 16, 18, and 26.

The Office Action does not rely on *Arunapuram* to cure the shortcoming of *Smith* and *Wilson* as discussed above, although *Arunapuram* does disclose determining "multiple alternative freight movements that meet delivery time requirements and other business constraints." See Paragraph [0059]. Instead, the Office Action cites *Arunapuram* as teaching "the use of shipping orders, where a set of trips for a shipping order are set, and a trip is selected based on things such as cost and whether the items are hazardous materials." OA page 6. Even assuming the Office Action's characterization of *Arunapuram* is correct, which Applicant does not concede, *Arunapuram* still fails to disclose or suggest "determining, by a source, a future availability date of the good, with respect to a date of the determining, at a set of source locations comprising origins for the good, the future availability date being determined independently of the requested delivery date," and "selecting a source location, by a planner module, from the set of source locations based on the

future availability date of the good at the set source locations." as recited by amended claim 1.

In view of the mischaracterization of the prior art set forth above, the Examiner has not properly ascertained the differences between the claimed invention and the prior art. Moreover, the Examiner has articulated no reason as to why one of skill in the art would find the claimed combination obvious in view of the prior art, despite these differences. For at least this reason, no *prima facie* case of obviousness has been established. The rejection of claims 5, 7, 16, 18, and 26 under 35 U.S.C. §103(a) as being obvious over *Smith* and *Wilson*, in view of *Arunapuram* is thus improper and should be withdrawn.

C. Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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